



Revisiting the Position of Governor under Indian constitution in reference to recent case of West Bengal, Chhattisgarh and National Capital Region Delhi.

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Abstract

The governor's job and powers have become contentious in recent times. This, of course, corresponds with the rise to power of a centrist party that has a clear majority. The governors of Karnataka, Madhya Pradesh, Chhattisgarh, Kerala, Maharashtra, and of course, West Bengal have all been at the centre of controversy in recent years. However, they have done nothing to elevate the stature of their respective offices. We were mistaken if we imagined that the frequent and heated debates about the legality of governors' activities in the 1960s and 1970s would have unobtrusively ushered in some beneficial norms for the decades to come. It has been challenging to change the widespread public perception of state governors as "an agent of the centre." The current controversies have centred on the following topics: the selection of the chief minister; the determination of the timing for proving legislative majority; the demand for information about day-to-day administration; the apparent delay in giving assent to bills or reserving bills for the President; comments critical of specific state government policies; and the exercise of the governor's powers as chancellor of state universities. This paper aims to deconstruct the power game between the state and centre in context of constitutional legality.

Keywords: Governor, Indian Constitution, Power Relation, Federalism, Controversy

Introduction:

Position of governor under Indian constitution

The Constitution of India established the office of the Governor. It vested that person with the authority to follow the ministerial councils' recommendations and use their judgement in unforeseen circumstances. The executive power of the state is vested in him by the constitution, and he generally follows the advice and recommendations of ministers when carrying out routine administration. However, he is empowered to act on his own, so long as he does so with the welfare of the state and the public good in mind. This discretionary authority of the Governor is a frequent source of tension between the legislative and the executive branch. People look to him as the "Guardian of the Centre" or the "Link Between Centre and State" to ensure that the connection between the union and the states remains cordial for national cohesion and stability.

The origins of the office may be traced back to the colonial era when power over the East India Company's management and administration was handed to the crown. After the constitution goes into effect, he serves a dual role: as the constitutional head of state, making decisions with the advice of the state's cabinet of ministers, and as the country's chief executive, making decisions at his discretion. Following the constitution, the Governor is vested with executive power, which he may use either directly or indirectly in his role as a legislative appointee; however, the scope of the Governor's discretionary authority is not specified; instead, it is left to his "sound discretion," and the Governor himself must declare that his decisions are final and cannot be challenged on the grounds that he should have or should not have acted in a given way. They (governors of various states) invited leaders of different parties to form government in respective states where Congress lost its majority after the fourth general elections, the first time such discretionary powers had been put to use in practice due to the absence of any rules and conventions regarding their use.

The same person can serve as Governor in two or more states because of the Seventh Amendment, ratified in 1956 and states the right to do so. According to Article 155, the President will appoint the state's Governor, and Article 156 makes it clear that the Governor will serve at the pleasure of the President for no more than five years from the date he takes office. However, the Governor may resign from office at any time by submitting his resignation to the President; if accepted, he will remain, Governor until a new governor takes office. The person appointed must be at least 35 years old and a citizen of India; he or she cannot be a sitting member of Congress or a state legislature; if he or she is, his or her seat in Congress or the state legislature will be considered vacant as of the date he or she assumes the governorship; he or she cannot be employed in a paid position for either the federal or state governments; and his or her salary, benefits, and perks will be set by legislation.

If there is no rule or law on a particular matter, the Governor can issue administrative rules, circulars, and orders by exercising his executive powers. The Governor's executive powers are coextensive with his legislative powers, covering all subjects on which the state legislative assembly is empowered to make laws. His most significant legislative authority is the ability to enact ordinances with the same legal force as a law for six months. He appoints the state's Chief minister and, with that official's input, the Council of Ministers,

which establishes guidelines for how various departments divide their workloads. If one party wins an outright majority in elections, the Governor must invite that party's recognised leader to serve as Chief Minister and form the government. If no party wins an outright majority, the Governor must use his or her discretion to invite either the single largest party with the most elected members or the leader of the opposition, who will then form a government with the support of elected members from multiple parties (in what is known as a post-coalition government). Using Article 164(1) of the Constitution, we learn that the Chief Minister and other Ministers serve at the leisure of the Governor. However, when taken together with Clause (2) of the same Article, we learn that the Council of Ministers is collectively responsible to the State Legislature. The government stays in power as long as it has the support of the House of Representatives. However, if it ever loses the confidence of the House and refuses to leave, the Governor has the power to replace the whole cabinet.

Similarly, suppose a chief minister loses the majority in one or both houses and asks the Governor to prorogue the assembly in the middle of the session to save and reorganise his government. In that case, the Governor is within his right to refuse, as was seen repeatedly during the 1970s and 1990s when CMs asked governors to prorogue the assembly to save and reorganise their governments. If a majority ministry recommends dissolving the assembly, the Governor must comply with that recommendation. However, suppose the recommendation comes from a minority ministry that is afraid of being overthrown by the opposition. In that case, the Governor can reject the recommendation and instead seek other solutions. After a bill passes the assembly and is sent to the Governor, he has three options: first, he can sign it into law; second, can veto it; or (iii) he can send it back to the assembly for reconsideration by the President as soon as possible, but the provision does not specify a time limit for this. If the Governor receives a non-budget measure, he may return it to the legislature with an explanation and amendment proposals. However, he must sign it if the legislature passes it again, with or without his changes.

Current issues of contention include the Governor's habit of meddling in day-to-day government operations, his decision to withhold assent to a bill for an indefinite period, his power to appoint a Chief Minister in the event of a minority government, his authority to appoint Vice Chancellors at state universities.

Post of Governor as bone of contention:

We'll begin by discussing the contentious term of Mr Jagdeep Dhankhar as Governor of West Bengal, during which a chasm opened up between the state's democratically elected government and the executive head. Within three months of his employment, he was accused of politicising the state's administration and instruments of law and order. His dispute with Chief Minister Mamata Banerjee made headlines across the country. After the Governor's careless actions caused delays in state administration, a TMC lawmaker from Lok Sabha went directly to the President to speak about it during His Majesty's opening session of the 2022 budget. According to the media, Sudip Bandopadhyay advised the President, "You take a decision and immediately dismiss the West Bengal governor and restore parliamentary democracy." West Bengal's Legislative Assembly Speaker had already written to the Prime Minister and Lok Sabha Speaker concerning the Governor's interference with the assembly's legislative process. Chief Minister Mamata Banerjee and her ministers eventually submitted a resolution to the legislature requesting that the President recall the Governor.

His trip to the troubled region after the May 2021 state election was also criticised as an unconstitutional overstep of boundaries set by the constitution. The political framework of the National Capital Territory has long made the power struggle between Delhi's elected chief minister and the lieutenant governor a controversial topic. However, the situation escalated when Arvind Kejriwal was elected chief minister of NCT. On his first day in office as Delhi's chief minister, Arvind Kejriwal tried to introduce the Janlokal Bill to the state legislature without obtaining federal government approval. However, the state's lieutenant governor blocked him, claiming constitutional restrictions. When he was reelected as chief minister in February 2015, he issued an order requiring all files pertaining to police, land, and public order to be routed through the chief minister's office within a month of taking office. However, lieutenant governor Najeeb Jung refused to comply on the grounds that these responsibilities properly fell under his purview. In 2016, Anil Bajjal, a former union home secretary, replaced Najeeb Jung as the Lt Governor of the National Capital Territory (NCT). For the first few months after his appointment, relations between the CM and the Lt Governor were cordial. However, in 2017, the CM proposed a scheme for the doorstep delivery of services. The Lt Governor promptly rejected it, citing concerns over public safety, government costs, traffic, and other issues. A few AAP MLAs were accused of manhandling the Chief Secretary at the residence of the CM, prompting an investigation by the police at the CM's residence and smearing the Lt governor as someone who supports the police. Then, in June of the same year, CM Kejriwal and his colleague minister protested the installation of CCTV cameras in city streets, alleging non-cooperations by bureaucrats. However, that same year, the Supreme Court ruled that the Lt. Governor is responsible for maintaining public safety and order. It issued an order directing the two branches to cooperate for the public's benefit. The oxygen shortage in the capital in May of 2021 was brought to light thanks to this fight. VK Saxena took office as Lt. Governor in May 2022, declaring that he would not be a "rubber stamp" but a "local guardian of the people." He immediately launched an Anti-Corruption Investigation into the construction of hospitals, which the Deputy Chief Minister of the National Capital Territory criticised. The government's excise police have been under investigation since last November when Lt. Governor Saxena requested the CBI look into the situation. Similarly, former Lt. Governor of Puducherry Kiran Bedi, who emerged as a principal political rival of then CM V Narayanaswami, broke with the convention by addressing the public shortly after taking office. In a second strategic move, she opened the gates of Raj Niwas to the public to hear their grievances; as a result, the government of the UT accused her of running a parallel government. Bedi also began organising cycle rallies to interact with people. She was also accused of obstructing legislation by delaying her consent; however, she was recalled by the President just three months before the assembly election in February 2021. Another case involving the appointment of Vice Chancellors in state universities comes from the state of Chhattisgarh, where Governor Anusuiya Uikey got into an argument with Chief Minister Bhupesh Baghel over the appointment of members of a particular community to positions at the state universities. In response to these allegations, the CM said that the Governor should "stop doing politics" because doing so goes against constitutional norms. It was observed that "Across Chhattisgarh's 14 universities, vice-chancellor positions have been handed exclusively to members of a single ethnic group. It is important to provide residents of all the state's cities and towns a fair shot ". Several additional occurrences may be cited in which the Governor and the CM were at loggerheads, with the CM frequently accusing the

Governor of deferring to federal government directives. After the 2019 assembly elections in Maharashtra, when the pre-alliance of the BJP and the Shivsena failed, and the state was left without a ministry for a long time because no one had an absolute majority, then-governor Bhagat Singh Koshiyari invited Devendra Fadnavis to form a government with the support of a minority of the Nationalist Congress Party's MLAs, among them Ajit Pawar; however, Fadnavis's government The ministers of the MVA government, especially Chief Minister Uddhav Thackrey, have periodically blamed the Governor for causing chaos in state administration by inappropriately intervening in legislative processes and refusing to give his consent to certain laws passed by the government.

Recommendations and conclusion:

Given the following political developments, we must consider the following requirements. There is no time limit in the constitution for the President to give his assent or withhold his assent to a bill, and there is also no provision specifying the types of bills to which he must or must not give his assent; instead, this decision is left to his discretion, which appears to be broad and unguided. It has been observed over the past few years that there is a higher chance of obstruction when the party in control at the federal level is different from the party in control at the state level since the Governor is practically appointed by the President, who appoints after receiving instructions from the Prime Minister. It is also an impediment to progress that if a law is referred back to the assembly by the President, and the House passes it again with or without the recommendations made by the President; the President is not obligated to award assent. This situation is different for the Governor. It is not appropriate, however, to refer to governors as agents of the federal government; they have sworn to serve the people of their states and are required to report on the status of affairs in their respective states to the federal government and the President. Former Supreme Court judge R.S. Sarkaria led a commission that recommended changes to the Governor's office from the time of appointment until the end of their term in office. These included requiring that governor appointees be "eminent," that they spend at least some time outside the state before taking office, that they have no ties to state or local politics, and that they not be active in politics at all during the time leading up to their appointment. His term in office should be set in stone, not left to the whims of the President, and should not be interrupted except in cases of extreme necessity; if a governor is removed from any state, the union government should explain why in parliament; and after his term ends, he should be ineligible for reappointment to any office of profit under any state or union government, barring appointment as Governor for a second term or as an eminent person in some other capacity. In the event of an absolute majority, he must invite the head of the single largest party to form the government; in the absence of an absolute majority, he must invite the head of the party or alliance with the most significant majority; in the case of a post-election alliance, he must select the head of the alliance whose members he believes will be the most effective in implementing his agenda. The commission also agreed that the tradition of the President being given first dibs on bills might be ended unless doing so would threaten the country's security or be against the constitution.

We agree with the Sarkaria commission's recommendations. However, it would be preferable if the leader of the Lok Sabha's opposition were also taken into account during the nomination of a Governor since this would increase openness and, to a considerable part, prevent a power struggle. The British established a precedent for appointing senior bureaucrats as governors, and the Indian government has continued the practice. This is because senior bureaucrats tend to remain in their positions for longer and are, therefore, in a better position to administer. It is undemocratic to appoint a senior politician who has lost an election as Governor of another state, especially if that person has a robust political philosophy that could impede the state's ability to run efficiently. A governor's role should be reformed concerning his discretionary and administrative powers. The popular conception of a governor is that of a rubber stamp, and this perception needs to be altered immediately.

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